

DATE: February 20, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22067

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq, Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 29, 2004, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guidelines L (Outside Activities), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct), of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended (Directive)). Applicant requested a hearing. On May 17, 2006, after the hearing, Administrative Judge Paul J. Mason denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: that he was denied due process of law in that he did not have an opportunity to present certain pieces of evidence which he considers relevant and material; that his attorney was ineffective; and that the Administrative Judge erred by finding Applicant falsified two questions on 1999 and 2000 security clearance applications regarding foreign contacts. Applicant requests that the Board remand the case to the Judge for his consideration of additional evidence.

The Administrative Judge found that, on security clearance applications dated October 19, 1999, and April 12, 2004, applicant answered "no" to question 14, concerning whether he had ever had any contact with a foreign government, its establishment or representatives. However, the Judge also found that Applicant has provided training on open source intelligence in foreign countries, such as Canada, Belgium, Italy, and Sweden and that in the course of doing so he had frequent contact with foreign representatives, such as military officials. The Judge concluded that Applicant falsified his answers to these two questions. That conclusion is reasonably supported by the record evidence.

We have examined the record and find no basis to conclude that Applicant was denied the due process rights secured to him by Executive Order 10865, February 20, 1960, as amended, and Department of Defense Directive 5220.6, January 2, 1992, as amended. To the extent Applicant complains he was denied an opportunity to present evidence, the Board finds nothing in the record to support that claim. To the extent that Applicant has raised ineffective assistance of counsel, DOHA hearings are civil in nature and, therefore, this doctrine does not apply to them. See ISCR Case No. 02-22404 (App. Bd. May 5, 2005). To the extent that Applicant's appeal submission includes new evidence, the Board does not have the authority to consider new evidence on appeal. See ISCR Case No. 03-21072 (App. Bd. June 12, 2006). We conclude that the Administrative Judge did not err in denying Applicant a clearance, and that Applicant was not denied any of his procedural rights under the Directive.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board